

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1134 of 1993
WITH
CRIMINAL APPEAL NO.175 OF 1994
AND
CRIMINAL APPEAL NO. 177 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy
of the judgement? No.
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No.
5. Whether it is to be circulated to the Civil Judge?
No.

CHANDRAKANT CHHAGANLAL JAISWAL

Versus

STATE OF GUJARAT

Appearance:

CRIMINAL APPEAL NO. 1134/93.

MR JM PANCHAL for the appellant.
MR MA BUKHARI, APP, for the Respondent.

CRIMINAL APPEAL NO. 175/94.

MR M.A.BUKHARI, APP, for the appellant.

MR JM PANCHAL for the Respondents .

CRIMINAL APPEAL NO. 177/94.

MR M.A.BUKHARI, APP, for the appellant.

MR JM PANCHAL, for ther respondents.

CORAM : MR.JUSTICE K.R.VYAS and

MR.JUSTICE A.M.KAPADIA

Date of decision: 05/03/99

ORAL JUDGEMENT

Per: K.R.Vyas,J

Appellant, Chandrakant Chhaganlal Jaiswal, alongwith two others, was tried for causing murder of Natversinh @ Laxmansinh Sardarsinh Hada punishable under Section 302 of the Indian Penal Code and for causing injuries to Manishkumar Laxmiprasad Prajapati punishable under Section 323 read with section 34 of the Indian Penal Code and Section 135 of the Bombay Police Act. The learned Sessions Judge, Sabarkantha at Himatnagar, at the end of the trial, after considering the evidence on record vide his judgment and order dated 2-9-93 passed in Sessions Case No. 21/93, convicted the appellant Chandrakant for the offences punishable under Section 304, part II and Section 323 of the Indian Penal Code and sentenced him to undergo R.I. for five years and to pay a fine of Rs.1000/- indefault to undergo S.I. for two months for the offence under Section 304, Part II and R.I. for two months and to pay a fine of Rs.500/- indefault to undergo S.I. for seven days and directed the sentences to run concurrently. The other two accused were acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 135 of the Bombay Police Act. However, they were convicted for the offences punishable under Section 352 and Section 323 of the Indian Penal Code and were sentenced to suffer S.I. for one month and to pay a fine of Rs.200/indefault to undergo S.I. for five daysfor the offence punishable under Section 352 and to suffer R.I. for two months and to pay a fine of Rs.500/- indefault to undergo S.I. for seven days.

Original accused No. 1- Chandrakant has preferred Criminal Appeal no. 1134 of 1993 challenging

the judgment and order of conviction and sentence passed against him, while the State of Gujarat has preferred Criminal Appeal No. 175 of 1994 for enhancement of sentence and Criminal Appeal No. 171 of 1994 against the order of acquittal for the offence punishable under sec. 302 passed against all the accused. Original accused no. 2 and 3 have not preferred any appeal against the judgment and order of conviction and sentence passed against them.

Takhatsinh Sardarsinh (PW 3, Ex. 17) brother of deceased-Natvarsinh, is the complainant in the present case. According to him, he is running a Lodge in the name of Rajputana Lodge situated near the Temple of Goddess Revadi Mata in Vadali village. His brother Natvarsinh was running a Pan shop in the name of Nutan Pan Palace also situated opposite said temple near Kailash Nasta Gruh (Restaurant). According to the complainant, at about 4.00pm on 30.12.1992 accused no. 1 came to his Lodge and instructed him to advise his brother not to interfere with his affairs. The complainant wanted to know the cause of quarrel to which accused No. 1 told him that his brother is aware about the same and that he should merely pass on this message to him. Accused no.1 thereafter left .

At about 6.30 pm on the same day all the accused came to the Pan Shop of the deceased Natwarsinh. The complainant was standing outside his Lodge. Accused No. 1 asked deceased Natwarsinh to come out of his shop. When the deceased came out , all the accused started giving fist blows to the deceased. On seeing this, Laxmikant Dharamchand Prajapati (PW 5, Ex.22), Manishkumar Laxmikant Prajapati (PW 4 Ex. 20) and other prosecution witnesses came there and tried to relieve the deceased. At that time, accused no. 1 inflicted a knife blow on the chest of the deceased and also gave fist blows to Manishkumar. The deceased fell down on the ground. The complainant thereafter arranged for a Jeep Car and took the deceased to Civil Hospital at Idar. On the way to Idar Hospital, Takhatsinh inquired about the cause of quarrel from deceased Natwarsinh to which deceased Natwarsinh replied that he has accepted Geeta, daughter of Laxmikant Dharamasi, as his Sister and that Geeta also used to tie Raksha to him on the Rakshabandhan day. However, when Geeta informed him that accused No. 3 has sent a Diwali Greeting Card to her, the deceased scolded accused No. 3 and , therefore, with a view to take revenge, the accused have assaulted him and caused knife blow injury. The deceased succumbed to the injuries at the Idar hospital.

Jagatsinh Rathod, (PW 15, Ex. 51) PSI, Vadali Police Station recorded the complaint at about 9.45 pm and started investigation by recording statements, preparing panchanama etc. At the end of the investigation, on the basis of the material available against the accused, a charge-sheet was submitted against the accused. The learned Sessions Judge, Sabarkantha at Himatnagar, framed charge against all the accused to which the accused pleaded not guilty and claimed to be tried. At the end of the trial, the learned Sessions Judge, on the basis of the evidence on record, came to the conclusion that the prosecution has failed to prove the charge under Section 302 of the Indian Penal Code and therefore acquitted all the accused for the said offence. The learned Sessions Judge, however, by her judgment and order dated 2-9-93 convicted accused No.1-the appellant herein for the offence punishable under Section 304, Part II and accused Nos.2 and 3 for the offences punishable under Sections 352 and 323 of the Indian Penal Code and sentenced them as stated hereinabove.

Mr. Jayant M. Panchal, learned Advocate, appearing for the accused, broadly submitted that the motive as advanced and canvassed by the prosecution is not proved inasmuch as the prosecution witnesses have not come with the truth and the origin and genesis of the incident is suppressed by them. Although the origin of the incident took place in the main bazar of Vadali and when the independent witnesses were available, they have not been examined by the prosecution and only interested witnesses have been examined. In view of the infirmities and contradictions in the evidence of the eye witnesses, their evidence is not reliable and believable. Mr. Panchal submitted that looking to the serious condition of the deceased, it was not possible for him to make any oral dying declaration.

Mr. M. A. Bukhari, learned Additional Public Prosecutor, while supporting the reasoning of the learned Sessions Judge, submitted that in view of the direct evidence of eye witnesses which is reliable, the accused can be convicted even if the motive has become irrelevant. In the submission of Mr. Bukhari, the evidence of Manishkumar (PW 4) who was also an injured witness, clearly establishes the presence of all the accused and, therefore, conviction can be based relying on the testimony of this witness alone. He submitted that in view of the injuries sustained by the deceased on the vital part of the body i.e. chest at the hands of accused No.1 and in view of the threat given by accused

No.1 to the complainant prior to the incident, this being a case of predetermined mine, the accused are liable to be convicted for the offence punishable under Section 302 of the Indian Penal Code.

We have closely scrutinised the oral as well as documentary evidence on record. The prosecution, in order to bring home the guilt of the accused, has placed reliance on the evidence of five eye witnesses viz: Takhatsinh Sardarsinh Hada (PW 3, Ex.17), the brother of the deceased; Manishkumar Laxmikant Prajapati (PW 4, Ex.20) an injured witness; Laxmikant Dharamchand (PW 5, Ex.22), and the two tenants of Laxmikant Dharamchand, Keshasvlal Jesingdas Patel (PW 6, Ex.23), and Ishverbhai Joitabhai Prajapati (PW 9, Ex.26). With a view to prove the motive of the crime, reliance is placed on the evidence of Gita Prajapati (PW 7, Ex.24).

Before we discuss the evidence of the eye witnesses, it is necessary to refer to the medical evidence. Dr. Mina Vora (PW 1, Ex.12) was the Medical Officer of Civil Hospital, Idar. She performed the post mortem examination of the deceased in the morning of 31-10-1992. She found stab wound (penetrating injury) 3 cm x 1.5 cm size on chest at Rf 4th intercostal space 2 cm from centre of chest. The direction of wound was 1.5 cm oblique from right to left having edge inverted and the depth of the wound was 13 cm. Corresponding to the external injuries, the doctor found the following internal injuries :

- 1 Penetrating injury (stab wound) 2.5 cm x 1 cm
over lower lobe of Rt lung. The left lung was congested.
- 2 Penetrating injury (stab wound) 2.5 cm x 1 cm
over Rt ventricle of heart.

According to the doctor the cause of death was due to penetrating injury to heart and lung leading to internal haemorrhage, shock and coma. In the cross examination, Dr.Mina Vora has stated that when the post mortem was performed, the police of Idar Police Station were waiting outside the post mortem room. The clothes of the deceased were handed over to Idar Police Station. She has also admitted that except stab wound, there was no other external injuries on the person of the deceased and even the deceased did not have injuries like contusions and bruise. Finally she has stated that if there are injuries sustained on the right lung and heart, a person would collapse. In view of the medical evidence on record, we can safely conclude that the deceased died a

homicidal death.

The complainant as well as other prosecution witnesses, who posed to be eye witnesses, have more or less given identical versions regarding the participation of the accused in the scuffle and causing of injuries to the deceased as well as injured Manishkumar. They have remained consistent with their story that accused No.1 caused stab injuries to the deceased and Manishkumar was beaten by them. Even though there are variances in their evidence on other aspects, if their evidence is accepted as a whole, there is no escape from the conclusion that the accused are guilty of committing murder of the deceased and injuries to Manishkumar. However, on close scrutiny of their evidence and the manner in which the investigation was carried out coupled with the other circumstances which we will discuss hereinafter, we feel that it would be totally unsafe and hazardous to convict the accused relying on the testimony of the so-called eye witnesses.

It is the prosecution case that Gita Prajapati (PW 7) was studying in F.Y.B.Com. at Idar college in the year 1991-92 and she used to go to Idar college by bus from Vadali. Accused No.3 was also studying in the same college and he also used to go to Idar college by bus. It is the case of the prosecution that accused No.3 also used to tease Gita and Gita informed her parents about the same. It is also the prosecution case that on 24-10-1992, Laxmikant (PW 5) father of Gita received a Diwali Greeting Card addressed to Gita as Shrimati Gita and signed by Manisha Patel. On being inquired from Gita, she informed her father that she has no friend like Manisha Patel. Her father therefore suspected accused No.3 as the author of the said Greeting Card. Since Manish and deceased Natversinh were close friends, on 30-10-1992 after about six days of the receipt of the said Greeting Card, Manish in company of the deceased had gone to the house of accused No.3 and scolded accused No.3 telling him that the Greeting Card was written by him and the deceased also gave 2 to 3 slaps to accused No.3. Pursuant to the morning incident, accused No.1 went to complainant Takhsinh at about 4. 00 p.m. and asked him to advice his brother deceased Natversinh not to interfere in his affairs. Thereafter at about 6.30 p.m., the accused came together, gave abuses to the deceased, asked him to come out of his Pan shop and when the deceased came out, they gave fist blows and simultaneously accused No.1 caused knife injury to the deceased and when Manishkumar went to the rescue of the deceased, he was also given fist blows.

In view of the series of events which took place right from the morning till evening, , it is the prosecution case that since a Greeting Card was sent by accused No.3 under his signature as Manisha Patel to Gita and addressing her as Shrimati Gita and since accused No.3 was scolded and beaten by the deceased , the accused had a strong motive to commit the offence. In order to establish the motive, the prosecution, in fact, obtained the hand writings of accused No.3 and sent them to the Hand Writing Expert who after comparing the hand writings of accused No.3 with the writings on the Greeting Card sent his report, Ex.56, opining that the writings on the Greeting Card are not the handwritings of accused No.3. Thus the motive as advanced and canvassed by the prosecution is not proved successfully in the present case.

We are conscious of the fact that in absence of the motive a conviction can also be based. It is not necessary that motive is a must in all cases . Even if the motive is not established in the present case, there are certain vital questions which have remained unanswered in the present case. In other words, the prosecution has not established its relevancy. It has come in the evidence that accused No.3 teased Gita prior to the incident. Although the incident of teasing Gita had taken place prior to the incident, Laxmikant (PW 5) did not think it necessary either to scold accused No.3 or inform his parents about the unfair behaviour of accused No.3 and even though the Greeting Card alleged to have been written by accused No.3 was received on 24-10-92, the father as well as the brother of Gita kept quiet and did not do anything for almost six days and it was only on 30-10-92, the day of the incident, that Manishkumar-the brother of Gita had gone in company of the deceased Natversinh to the house of accused No.3 and scolded and beaten him. It is, therefore, difficult for us to accept the explanation that on 24-10-92 being the Diwali day the father of Gita did not think it proper to invite any quarrel with accused No.3. Similarly it is also not possible for us to accept the so-called explanation that after lapse of about six days the deceased would go alongwith Manishkumar to the house of accused No.3 and beat him on the suspicion that the Greeting Card was sent by accused No.3 only.

There is one more inherent difficulty in the way of the prosecution that it was accused No.3 who was responsible for sending the Greeting Card to Gita because of which the series of events started .If that is so, in

that case the prosecution could have led some evidence to show about the closeness of accused No.3 with the other accused and more particularly accused No.1. It has come in the evidence of the complainant Takhatsinh (PW 3) that accused No.1 came to his lodge at about 4.00 p.m. on 30-10-92 and told him to convey the warning to deceased Natversinh who had scolded and beaten accused No.3 in the morning that he should not interfere with his affairs. In that event accused No.3 could have gone either to the complainant or to the deceased and, in any case, could have caused injury to either of them, but as far as prosecution case goes, it was accused No. 1 who had gone to the Lodge of the complainant and it was he who had given threat to the complainant and, thereafter, in fact, fulfilled the said threat by causing fatal injuries to the deceased. The motive alleged by the prosecution is too weak warranting accused to invite quarrel with the complainant. While considering the evidence of prosecution witnesses, we will have to bear in mind the aforesaid facts particularly when there is no explanation to the aforesaid doubts.

As stated above, five prosecution witnesses in fact, witnessed the incident of beating. According to the complainant, the accused started giving fist blows to the deceased. At that time, Laxmikant, his son Manishkumar and one Natwarsinh Hada (another person having the same name as that of deceased Natwarsinh) were present. According to the complainant, when they tried to relieve the deceased, accused No. 1 inflicted knife blow on the chest of the deceased Natwarsinh. It is also the say of the complainant that all the accused had also beaten Manishkumar. The complainant and one Ishwarbhai (PW 9) thereafter took his brother Natwarsinh in a Jeep Car to the Idar hospital. When the complainant asked the deceased about the cause of quarrel, the deceased told him that he considered Gita, daughter of Laxmikant as his sister and she also used to tie Raksha to him on the Rakshabandhan day and since, accused No. 3 had addressed a Diwali Greeting Card to Gita and as Gita informed him about the same, he (deceased) in company with Manishkumar went to the house of accused No. 3, scolded him and also beaten him and, therefore, with a view to take revenge, all the accused had beaten him (deceased) and, accused No. 1 had inflicted knife blows on his chest. According to the complainant, the deceased died in the Idar Hospital itself and he had given complaint to the Vadali Police Station. In the cross examination, after giving location of and distance between his Lodge and the Pan shop of the deceased, he has stated that he had reached Idar hospital at about

7.00 or 7.15pm. It took about 5 to 10 minutes to make arrangement for the Jeep. According to him, Jeep takes about 15 minutes to reach Idar from Vadali. Idar Police Station was informed about the incident and the police from Idar came to the hospital. Idar police also inquired from him in the hospital about the incident. According to him, Idar Police informed Vadali Police Station from the hospital and, thereafter, police from Vadali Police Station came to Idar. According to him, the police from Vadali came at about 9.30p.m. He has admitted that even though he was inquired by the PSI, Vadali, in the Idar hospital, his complaint was recorded at Vadali Police Station. He has, thereafter change his version and stated that he had not informed PSI Vadali about the incident. However, he had narrated the incident after he reached Vadali Police Station at about 9.15 or 9.45pm on the same night. He has admitted that he had not informed his brother about the threat given by the accused no. 1 at 4.00pm. According to him, he was busy with his customers and business. He has denied the suggestion that it was not possible for him to witness the incident while sitting in his Lodge. He has also admitted that 50 to 60 persons collected at the place of offence to witness the incident of beating. According to him, the incident of beating continued for about 5 to 10 minutes.

Reading the evidence of the complainant Takhatsinh, although, he claims to be the eye witness, we have our own doubt regarding his claim to have witnessed the incident, if at all, he had witnessed the incident, than, there was no need for him to ask the deceased about the cause of incident when the deceased was being taken in a Jeep to Idar Hospital. According to him, the incident of beating lasted for about 5 to 10 minutes. In that case, the deceased could have received injuries in the nature of abrasion, bruise etc. Mina Vora, Medical Officer, Idar hospital, has clearly stated that except stab wound injury, the deceased had no other injuries. Thus, the evidence of the complainant does not get corroboration from the medical evidence. Even though PSI Vadali Police Station, met him in the Idar hospital itself and although he asked about the incident, he had conveniently omitted to give details about the assailants and the incident. It is, therefore, not possible for us to accept his version when he has stated that he had not disclosed any information about the incident to PSI, Vadali Police station, who was very much present in the Idar Hospital itself. The fact that PSI, Vadali Police Station, reached Idar Hospital at about 7.45pm on the same night, and yet the complainant had not given

complaint to him at that time and filed the same at Vadali Police Station at 9.45 pm, would suggest that the complaint was given with due deliberation and therefore, the possibility of falsely involving the accused cannot be ruled out.

The prosecution had also tried to obtain oral dying declaration alleged to have been given by the deceased to the complainant. Considering the injury sustained by the deceased, including the one congesting the lung and the heart and the time taken in getting the services of a Jeep to remove the deceased to the hospital, we have got our own doubt whether the deceased had in fact, made such a lengthy oral dying declaration. There is no evidence on record which would go to suggest that the deceased was treated at Idar Hospital. On the contrary, the evidence is to the effect that the deceased had already died while he was being removed in a Jeep to Idar Hospital. It has come in the evidence that Dr. Katara, Medical Officer of Idar Hospital, who had also performed post mortem examination with Dr. Mina Vora, gave telephonic information to Idar Police Station that one Natwarsinh Sardarsinh Hada of Vadali, who sustained stab injury, has died while taking treatment. Nazamiya Badumiya Khokhar (PW 13, Ex. 42), PSO, Idar Police Station, in his evidence has stated that he entered the said information in Station Diary, which was produced at ex. 43. This entry was made at 19.35 hrs. on 30-10-1992. Reading the said entry, Exh. 43, it is clear that an information of a cognizable offence having taken place was conveyed to the Police Station and pursuant there to, the said PSO asked Head Constable, Laxmansinh Kishorsinh of Idar Police Station to commence investigation. Laxmansinh (PW 14, Ex. 46) in fact, carried out the investigation by calling panchas and preparing inquest panchanama, Ex. 41. In view of this, when a cognizable offence was disclosed and pursuant there to the investigation was also commenced, in our opinion, entry Ex. 43 is the FIR. The learned Sessions Judge, was therefore, obviously in error in treating Ex. 43 as a cryptic message and not treating the same as FIR. Surprisingly, however, no names of the assailants have been disclosed in ex. 43, even though the complainant Takhatsinh was present at the Idar hospital. If Takhatsinh was present at the time when the incident had taken place, he could have disclosed the names of the assailants to Dr. Katara, who in turn, could have also passed on the said information to the Idar Police Station. In any case, complainant Takhatsinh could have also passed on the names of the assailants and could have described the manner in which the incident has taken

place to Head Constable Laxmansinh (PW 14 Ex. 46) of Idar Police Station. Laxmansinh in his cross examination has stated that on being asked to the complainant about the incident he came to know that the incident has taken place within the jurisdiction of Vadali police station and therefore, he informed Vadali Police Station by Wireless message. According to him, he submitted the report to the PSI, Idar Police Station. According to him, the brother of the deceased (complainant) informed him that his brother is murdered in the Bazar of Vadali and, therefore, other persons have gone to the Vadali Police Station for the purpose of filing complaint. The evidence of Laxmansinh clearly reveals that the complainant had not conveyed any information about the incident even though he was asked and it was Laxmansinh who in fact informed about the incident to Vadali Police station by Wireless message. In view of this entry Ex. 43 and the investigation initiated by Head Constable Laxmansinh pursuant thereto, it emerges that either complainant Takhatsinh had not witnessed the incident or he is not giving the true and correct facts. If at all, he had witnessed the incident, his normal conduct would have been to divulge the facts witnessed by him to the police. Not only that, the complainant has not described the incident nor disclosed the names of the assailants to PSI Jagatsinh Rathod of Vadali police station, who had come to Idar Hospital no sooner he received the Wireless message from Idar Police Station. It is, therefore, not possible for us to accept the version of the complainant Takhatsinh when he has stated that even though he was asked by PSI Jagatsinh of Vadali police station about the incident, he had not passed on the said information to him and, he passed on the information by way of complaint only at 9.30 or 9.45 pm when he reached Vadali Police Station. Surprisingly, PSI Jagatsinh Rathod in his evidence has also given entirely a different story. PSI Rathod, has admitted that he had gone to Idar hospital and yet, he did not meet the Doctor who performed the post mortem and he also did not see any of the relatives of the deceased. This part of his evidence is quite contrary to the evidence of complainant Takhatsinh. It appears to us that he has stated so with a view to see that the complainant meets him at about 9.30 or 9.45 pm at Vadali and gives his independent version before him. This conduct on the part of the police officer of not recording the information gathered by him either from Idar police or from the complainant at Idar when he visited Idar, creates doubts about the manner in which he carried out the investigation and it also appears to us that by suppressing the facts he had planned out the incident that the complainant met him at Vadali Police

station at 9.45 pm. The aforesaid discussion, would clearly go to suggest that complainant Takhatsinh who poses to be an eye witness, had in fact, not witnessed the incident. The tendency on his part to involve all the accused by not giving the correct facts is apparent and therefore, it is not possible for us to place any reliance on his evidence coupled with the fact that the deceased being his real brother he is definitely an interested witness. Having closely scrutinised his evidence, we are of the view that it totally unsafe to place reliance on his evidence.

Similarly, the evidence of Manishkumar and his father Laxmikant even though they have given almost identical version describing the incident of beating as narrated by the complainant, we are of the view that even their evidence also suffers from the same infirmity of being interested witnesses. As far as the motive of the incident is concerned, we have already discussed the same in the earlier part of this judgment. Manishkumar (PW 4) in his evidence has stated that all the accused started beating with the result he fell down and thereafter he saw deceased Natwarsinh lying on the ground. Manishkumar, in fact, inquired from him (deceased) about the incident and the deceased informed that accused no. 1 has inflicted knife blow on his chest. He has also accompanied Takhatsinh to Idar hospital. According to him, his father Chandrakant, Ishwarbhai (PW 7) and the Driver were in the Jeep. He has corroborated the say of the complainant regarding the dying declaration given by the deceased. In the cross examination, he has stated that he met PSI of Vadali Police station in the morning of 31-10-1992. He has specifically stated that he had not gone to Vadali Police Station alongwith the complainant at 9.30 pm. Reading the evidence of this witness Manishkumar, it is clear that even though he was beaten by the accused and thereby received injury and even though he was present at Idar hospital, he did not inform either Idar police station or PSI Vadali police station, who was very much present in the hospital, about the injury sustained by him and, therefore, he was not examined by the Doctor on that night. He has specifically stated that he had not gone to Vadali police station alongwith the complainant after returning from Idar. Jagatsinh, PSI Vadali police station (PW 15) in his evidence, on the contrary has stated that Manishkumar met him at about 12.00 night on 30-10-1992 and he therefore, gave a Yadi to him for taking medical treatment. Accordingly, Manishkumar took treatment from Dr. Manibhai Patel, Medical Officer, Primary Health Centre, Vadali. Dr. Patel examined Manishkumar at about

9.10 am on 31-10-1992 and found tenderness over the upper abdomen, abrasion on the right thigh and abrasion on the right hand and on the right nose. According to Dr. Patel, these injuries were possible by hard blunt substance or by fist blows or by fall. These injuries on the person of Manishkumar are superficial in nature. As stated above, since he had not disclosed the incident, either to the Doctor or the police at Idar hospital and had obtained medical treatment only in the morning of 31-10-1992, the possibility of including him as an eye witness after the complaint was filed at 9.45pm on 30-10-1992 cannot be ruled out. In view of the contradictory evidence of this witness and PSI Vadali police station, it can safely be concluded that his statement must have been recorded only on 31-10-1992 and was thereafter sent to the hospital for medical treatment. In view of his own admission, that he inquired from the deceased about the incident would go to suggest that he had in fact not seen accused No. 1 giving knife blows to the deceased. In any case, in view of superficial injuries sustained by him, which were also possible by fall, it is not safe to rely on his evidence especially when he is an interested witness.

For the same reason, it is also not possible for us to accept the evidence of Laxmikant (PW 5 Ex. 22) father of Manishkumar. In view of the fact that we are not prepared to accept the motive as alleged by the prosecution and the dying declaration alleged to have been made by the deceased to complainant Takhtsinh and when both these witnesses viz. Manishkumar and Laxmikant corroborate the say of the complainant on both these counts, in our opinion, it would be totally unsafe to place reliance on the evidence of such witnesses, who, in our opinion, are highly interested witnesses, inasmuch as they are keen to involve the accused.

The other two witnesses are Keshav (PW 6, Ex. 23) and Ishawarbhai (PW 9, Ex. 27), who are admittedly the tenants of Laxmikant (PW 5). Keshavlal identified accused no. 2 as Suresh. According to the evidence of Keshavbhai, there were many customers in his shop, he has clearly admitted that in the group gathered he could not see the knife blows being inflicted on the deceased by accused no. 1. He has further admitted in the cross examination that it was not possible for him to see as to the part played by each of the accused in view of the crowd gathered at that time. Reading his evidence, it is clear that he had in fact not seen the incident as he has not given any particulars about the part played by the accused. We therefore, do not place any reliance on his

evidence.

Ishwarbhai Prajapati (PW 9) in his evidence has also corroborated the say of the complainant regarding the incident of beating. He had also accompanied the complainant when the deceased was taken in a Jeep to Idar Hospital. He has admitted that he is partly deaf. In our opinion, the evidence of this witness also does not help the prosecution even though he has corroborated the say of the complainant since, his evidence and the evidence of other prosecution witnesses does not corroborate the medical evidence inasmuch as there were no other injury except stab wound on the person of the deceased. It clearly appears to us that the tendency of the prosecution witnesses is to involve all the accused. Therefore, we feel it safe to reject his evidence. Even though, the incident in question took place in a broad day light in the busy locality of Vadali and even though the Investigating Officer had recorded the statements of independent witnesses viz. Shankar Thakarda, Naran Vaghela and Yakubbbhai and who have been shown as witnesses no. 29, 30 and 31 in the charge-sheet, for the reasons best known to the prosecution, they have not been examined, and instead reliance is placed on the evidence of relatives and interested witnesses. Thus, considering all these aspects of the matter, we find ourselves in total disagreement with the reasonings given by the learned Sessions Judge in convicting accused no. 1 for the offence punishable under sec. 304 Part-II of the IPC, and other two accused for the offences punishable under sections 352 and 323 of IPC. In view of this, we hold that the prosecution has failed to establish the charge against the accused and, therefore, all the three accused deserve acquittal. It is true that accused no. 2 and 3 have not preferred any appeal against the order of conviction and sentence passed against them. However, in view of what is discussed above, we are of the view that the prosecution has failed to prove even the charge under section 352 and 323 of IPC against the accused no. 2 and 3.

In the result,

Criminal Appeal No. 1134 of 1993 is allowed.
The judgment and order of conviction and sentence passed by the learned Sessions Judge, Sabarkantha at Himatnagar

in Sessions Case No. 21 of 1993 is set aside and all the three accused are acquitted of the offences for which they are convicted. All the three accused , including appellant Chandrakant Chhaganlal Jaiswal, if they are undergoing the sentence, are ordered to be set at liberty forthwith if not required in connection with any other offence. Fine, if paid, shall be refunded to the accused.

Bail bonds of accused No.1 Chandrakant Chhaganlal Jaiswal-the appellant herein stand cancelled.

Criminal Appeals Nos. 175 and 177 of 1994 filed by the State are dismissed.

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